IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 1030 of 1997

For Approval and Signature:

HON'BLE MR.JUSTICE J.M.PANCHAL
and
HON'BLE MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

BIPINKUMAR HIMATLAL

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Appeal No. 1030 of 1997

MR KG SHETH for Appellant

THROUGH JAIL for Appellant

MR ND GOHIL, ADDL.PUBLIC PROSECUTOR for Respondent

CORAM : HON'BLE MR.JUSTICE J.M.PANCHAL
and
HON'BLE MR.JUSTICE D.P.BUCH

Date of decision: 23/07/2004

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE J.M.PANCHAL)

Instant appeal filed under Section 374 of the Code of Criminal Procedure, 1973, is directed against judgment dated September 30, 1997, rendered by the learned Sessions Judge, Sabarkantha at Himatnagar, in Sessions Case No.60 of 1997, by which the appellant is convicted of the offence punishable under Section 302 of the Indian Penal Code and sentenced to suffer R.I. for life and fine of Rs.5000/-, in default, R.I. for six months.

2. The appellant is a resident of village Jaleti, Taluka : Vijaynagar, District : Sabarkantha. Deceased Nayanaben Bachuji Baranda of village Jesingpura was studying with the appellant. Just near the house of the appellant, house of his aunt Lilaben is situated. His grandmother Jiviben is also residing near the house of the appellant. He had enticed away the deceased prior to two months and five days of the date of incident, which is March 20, 1997. However, he had not married with the deceased. The mother of the appellant was staying in the house of the appellant along with the deceased. The appellant was suspecting that the deceased had relations with others. Therefore, he had severely beaten the deceased 10 days prior to the date of incident. On the day of incident i.e. March 20, 1997, mother of the appellant was not present in the house, as she had gone to her paternal house situated at village Kalyanpur and only the appellant and the deceased were in house. At about 2.00 P.M. on March 20, 1997 the appellant had started beating deceased Nayanaben by means of an iron pipe which was witnessed by his aunt and grandmother. In order to save herself from further thrashing, deceased was shouting for help and had run towards the house of Jivaji Dharmaji situated quite nearby the house of the appellant. However, the appellant had chased her with iron pipe in his hand and near the house of Jivaji, the appellant had caused grievous injuries to the deceased on her leg, abdomen, chest and hand by inflicting pipe blows. In order to save herself from further injuries being inflicted by the appellant, the deceased had again started running towards the field of First Grade Jamadar Gulabji Valaji and was shouting for help. Gulabji Makwana was sitting near his house and supervising carpentry work entrusted by him to carpenter Mogjibhai. Gulabji and Mogjibhai had witnessed that deceased Nayanaben was shouting for help and was bleeding profusely followed by the appellant. On seeing the

condition of the deceased, both Gulabji and Mogjibhai had asked the appellant not to beat the deceased, but the appellant had rudely replied that he was entitled to do anything to his wife and that they were not concerned as to what was happening to the deceased. So replying, the appellant had caught the deceased by hair and while continuing to beat her, had dragged the deceased into his house. After bringing the deceased to his house, the appellant had severely beaten the deceased, as a result of which the deceased had raised shrieks. The appellant had caused injuries to the deceased on her thigh, two legs, abdomen, chest and head. He had also caused injuries to the deceased by thrusting irregular edge portion of the pipe. The appellant had also caused thrust injury on the eye of the deceased, as a result of which eye ball of the deceased was burst and blood was oozing out from the injury. It may be stated that no one had come to the rescue of the deceased. In view of multiple injuries received at the hands of the appellant, the deceased had fallen down in the house of the appellant in a bleeding condition and died on the spot. Thereafter the appellant had made his escape good from rear door of the house. As Lilaben, who is aunt of the appellant and others had not heard shouts of deceased Nayanaben, they had gone inside the house of the appellant and found that the deceased had died and was lying in a bleeding condition. Thereupon Lilaben had gone to the house of Sarpanch of village Jaleti and informed him about the incident. The Sarpanch had collected leading citizens of the village and all had gone to the house of the appellant. After ascertaining that the deceased had died, Lilaben in the company of the Sarpanch and others had gone to Vijaynagar Police Station and lodged her complaint at 1.30 A.M. of March 21, 1997, which was recorded by Head Constable Jitendrasinh Dasharathsinh, who was then P.S.O. of the Police Station. After registering the offence against the appellant, necessary entry was made in the station diary by Head Constable Jitendrasinh and the complaint was handed over for investigation to Head Constable Sajaji. Meanwhile, P.S.I. Mr.Saiyad of Vijaynagar Police Station had resumed duty in the morning of March 21, 1997 and he had taken over the investigation of the case from Head Constable Sajaji. P.S.I. Mr.Saiyad had immediately visited village Jaleti and after calling Lilaben as well as other leaders of the village had visited the place of incident. P.S.I. Mr.Saiyad had held inquest on the dead body of the deceased and made arrangement for sending dead body of the deceased to Referral Hospital at Vijaynagar for postmortem examination. Thereafter Lilaben, who is aunt of the appellant, had pointed out

place of incident and, therefore, P.S.I. Mr.Saiyad had prepared panchnama of place of incident in presence of two panch witnesses. From the place of incident, P.S.I. had seized one pair of slipper, one pair of anklets, blood stained earth etc. and recorded statements of Jiviben, who is grandmother of the appellant, Valiben, Ramjibhai, Gulabji Valajibhai etc. Meanwhile, members of paternal house of the deceased had arrived at the place of incident and, therefore, their statements were also recorded. Though intense search of the appellant was made, he could not be traced and, therefore, necessary information was conveyed at Idar Police Station, Bhiloda Police Station etc. Police Head Constable Kamlendrasinh had seized the clothes which were found on the dead body of the deceased. Incriminating articles were sent to Forensic Science Laboratory ("F.S.L." for short) for analysis. Meanwhile, further search about the appellant was made at Ahmedabad, Gandhinagar, Piplaj etc., but as the appellant had made himself scarce, he could not be arrested. Ultimately, the appellant was arrested on March 26, 1997 and panchnama of person of the appellant was prepared. While in police custody the appellant had shown willingness to point out the place where he had concealed the pipe used by him in commission of crime. Therefore, two panch witnesses were summoned by the investigating officer. In the presence of panch witnesses also the appellant had shown his willingness to point out the place where the pipe was concealed. The appellant had thereafter led the investigating officer and the panch witnesses near the well-room situated behind his house and taken out the pipe used by him in commission of crime. The pipe was found to be bloodstained and, therefore, was sent to F.S.L. for analysis. On receipt of result of analysis and completion of investigation, the respondent was chargesheeted of the offences punishable under Section 302 I.P.C. and Section 135 of the Bombay Police Act in the Court of learned Judicial Magistrate, First Class, Khedbhrahma Camp at Vijaynagar. As the offence punishable under Section 302 I.P.C. is exclusively triable by a Court of Sessions, the case was committed to Sessions Court, Sabarkantha at Himatnagar for trial, where it was numbered as Sessions Case No.60 of 1997.

3. The learned Sessions Judge had framed charge against the appellant at Exh.3 of the offence punishable under Section 302 I.P.C. The charge was read over and explained to the appellant, who had pleaded not guilty to the same and claimed to be tried. The prosecution had, therefore, examined (1) Dr.Narendrakumar Somabhai Pande as PW.1 at Exh.7, (2) Lilaben Dalaji Mavji as PW.2 at

Exh.12, (3) Gulabji Valaji as PW.3 at Exh.14, (4) Jiviben Mavjibhai as PW.4 at Exh.17, (5) Mogjibhai Kanaji as PW.5 at Exh.18, (6) Rajuben Sabuji as PW.6 at Exh.19, (7) Dahyabhai Ditaji as PW.7 at Exh.23, (8) Kanaji Koyaji as PW.8 at Exh.25, (9) Jitendrasinh Dasharathsinh as PW.9 at Exh.28, and (10) Varas Ali Taidumiya Saiyad as PW.10 at Exh.30, to prove its case against the appellant. The prosecution had also produced documentary evidence, such as, panchnama indicating holding of inquest on the dead body of the deceased at Exh.10, postmortem notes of the deceased at Exh.11, complaint lodged by Lilaben at Exh.13, map of place of incident at Exh.16, panchnama indicating seizure of clothes of the deceased at Exh.21, arrest panchnama of the appellant at Exh.22, panchnama of place of occurrence at Exh.24, panchnama indicating discovery of pipe pursuant to information given by the appellant while he was in police custody at Exh.26, necessary entry from police station diary at Exh.29, result of analysis issued by F.S.L. at Exh.34 etc. in support of its case against the appellant.

4. After recording of evidence of prosecution witnesses was over, the learned Sessions Judge had explained to the appellant the circumstances appearing against him in the evidence of prosecution witnesses and recorded his further statement as required by Section 313 of the Code of Criminal Procedure, 1973. In his further statement, the case of the appellant was that of general denial. The defence pleaded by the appellant was that he was innocent and a false case was filed against him. However, he had neither examined himself on oath nor examined any witness in support of defence pleaded by him in his further statement.

5. On appreciation of evidence adduced by the prosecution it was held by the learned Judge that it was proved by the prosecution beyond reasonable doubt that the deceased had died a homicidal death. According to the learned Judge, sworn testimony of (1) Lilaben, who was aunt of the appellant, (2) Jiviben Mavjibhai, who was grandmother of the appellant, (3) independent witnesses i.e. of Gulabji Valaji and Mogaji Kanaji was consistent, trustworthy and free from major contradictions and/or omissions, as a result of which it was safe to act upon their evidence. What was held by the learned Judge was that the testimony of witness Lilaben as well as that of Gulabji Valaji and that of Jiviben as well as that of Mogaji proved beyond reasonable doubt that the deceased, who was wife of the appellant, was fatally assaulted by the appellant on March 20, 1997 with an iron pipe and that the appellant had caused her death by inflicting

pipe blows on her head, hand, legs, chest, eye etc. It was further deduced that the only intention of the appellant was to cause death of the deceased by inflicting serious injuries and, therefore, the appellant was liable to be convicted of the offence punishable under Section 302 I.P.C. In view of abovereferredto conclusions, the learned Judge has convicted the appellant of the offence punishable under Section 302 I.P.C. and imposed sentence referred to earlier by judgment dated September 30, 1997, giving rise to instant appeal.

6. Mr.K.G.Sheth, learned counsel of the appellant, contended that medical evidence on record establishes that the deceased had sustained 10 injuries, but accurate account of those 10 injuries is not given by witness Lilaben in her testimony before the Court and, therefore, claim of Lilaben that she had witnessed the incident in question should have been rejected by the learned Judge of the trial Court. According to Mr.Sheth, learned counsel of the appellant, witness Lilaben had made major improvement in her testimony before the Court which is quite evident from Para-4 of her deposition and, therefore, it was not safe to act upon her testimony for convicting the appellant of major offence. What was maintained by the learned counsel of the appellant was that she had not made any attempt to save the deceased; whereas her testimony shows that she had land dispute with the appellant, as a result of which false implication of the appellant by her is not ruled out and, therefore, testimony of Lilaben should not be taken into consideration by the Court while determining guilt or otherwise of the appellant. It was argued that though the incident in question had taken place at about 2.00 P.M. on March 20, 1997, the complaint was lodged at 1.30 A.M. on March 21, 1997 and as no explanation is offered either by Lilaben or by any of the prosecution witnesses as to why complaint was not lodged promptly, the trial Court should have disbelieved testimony of Lilaben. While dealing with the evidence of witness Gulabji, it was argued by the learned counsel of the appellant that his evidence shows that he had, in fact, not seen that the appellant was beating the deceased, but, his evidence at the best establishes that he had seen that a lady was running and that the appellant was chasing her with a pipe in his hand, but that fact by itself would not establish that the appellant was the author of injuries sustained by the deceased and, therefore, evidence of Gulabji is of no assistance to the prosecution. While commenting on the testimony of witness Jiviben, it was pointed out that on her own admission she had weak eye

sight and, therefore, her claim that she had seen the appellant inflicting blows on the deceased by means of pipe should have been disbelieved by the trial Court. After referring to the testimony of Mogaji, it was argued that he is under thumb of the Sarpanch and, therefore, his testimony should also have been disbelieved. According to the learned counsel of the appellant, the learned Sessions Judge has failed to appreciate the evidence on record in its true perspective and, therefore, the appeal should be accepted.

7. Mr.N.D.Gohil, learned A.P.P., contended that witness Lilaben and witness Jiviben, who are close relatives of the appellant, would not involve the appellant falsely in a serious case and, therefore, the learned Judge of the trial Court was justified in acting upon their testimonies, more particularly when no major contradictions and/or omissions were noticed in their evidence. According to the learned counsel of the State Government, the case of the prosecution also stands proved by reliable evidence of independent witnesses Gulabji and Mogaji, who are neither interested in the deceased nor are on inimical terms with the appellant and, therefore, well-founded conviction of the appellant of the offence punishable under Section 302 I.P.C. should not be regarded as erroneous or illegal. What was emphasised by the learned A.P.P. was that the appellant had caused several serious injuries to the deceased by means of iron pipe and killed her brutally, which is evident from the testimonies of four eye witnesses as well as that of medical evidence, and having regard to the reliability of the evidence adduced by the prosecution, the appeal should be dismissed.

8. This Court has undertaken a complete and comprehensive appreciation of all vital features of the case and the entire evidence on record with reference to broad and reasonable probabilities of the case. The fact that deceased Nayanaben died a homicidal death is not in dispute. It is not contended by the learned counsel of the appellant before this Court that the deceased had not met with a homicidal death. Dr.Narendrakumar Somaji Pande, PW.1 Exh.7, who had performed autopsy on the dead body of the deceased, has enumerated in detail, in his substantive evidence before the Court, the injuries sustained by the deceased, which were noticed by him while performing postmortem examination. As per the medical evidence, the deceased had sustained 10 serious injuries including fractures. The suggestion of the defence that the injuries sustained by the deceased were accidental in nature, was emphatically denied by the

medical officer. So also, the suggestion made by the defence that the injuries sustained by the deceased were possible due to an accident was also emphatically denied by the medical officer. The medical officer stands completely corroborated by contemporary document, namely, postmortem notes produced on record of the case at Exh.11. The injuries sustained by the deceased are also mentioned in the inquest panchnama produced at Exh.10 on the record of the case. Further, the four eye witnesses have also narrated as to how the deceased had received injuries. Under the circumstances, there is no manner of doubt that the deceased had died a homicidal death. The finding recorded by the learned Judge of the trial Court to the effect that it was proved by the prosecution beyond reasonable doubt that the deceased had died a homicidal death is eminently just and is hereby upheld.

9. This brings the Court to consideration of the evidence of eye witnesses examined by the prosecution. Lilaben Dalaji Mavji, who is examined at Exh.12, has stated in her testimony that name of her husband is Dalaji Mavji; whereas name of elder brother of Dalaji Mavji is Himatbhai Mavji and that the appellant is son of Himatbhai Mavji. Thus, her evidence would indicate that the appellant is son of her elder brother-in-law. According to this witness, the appellant had brought Nayanaben, who was belonging to Jesingpura, as his wife and that the appellant was staying with the deceased and his mother. What is stated by the witness before the Court is that initially the appellant had maintained good relations with the deceased, but thereafter he was beating Nayanaben, as he was suspecting her fidelity. It is further stated by the witness that she herself had seen the appellant beating deceased Nayanaben. According to this witness, on the day of incident she was present in her house and seen that the appellant was beating deceased Nayanaben with an iron pipe. It is mentioned by the witness in her testimony that in order to save herself from injuries, the deceased had run towards the house of Jivaji, who was also her brother-in-law, but the appellant had caught her and dragged her to his house. The witness has stated that thereafter deceased Nayanaben had gone towards the house of Gulabji, who was present and who had asked the appellant not to beat Nayanaben, but the appellant had arrogantly told Gulabji that Nayana was his wife and he was entitled to beat her. According to witness Lilaben, the appellant had started beating Nayanaben near the house of Gulabji and again dragged the deceased to his house. What is mentioned by the witness is that because of the blows which were inflicted by the appellant by means of an iron pipe, deceased Nayanaben

had raised shrieks and was shouting for help and as the appellant had threatened her, she could not intervene to save the deceased. It is also mentioned by the witness that after sometime she had not heard shrieks or shouts of the deceased and had found that the deceased was dead, whereas the appellant had fled away. The witness has informed the Court that thereafter she had approached Sarpanch and narrated the incident to him, as a result of which Sarpanch and other leading persons of the village had come to the place of incident. According to this witness, she in the company of Sarpanch and others had gone to Vijaynagar Police Station and lodged complaint against the appellant at about 1.30 A.M. It is also mentioned by the witness that incident in question was witnessed by Jiviben, who is her mother-in-law as well as by Gulabji and Mogaji Kanaji Suthar, who was doing carpentry work at the house of Gulabji. During the course of recording her evidence, the witness was shown iron pipe discovered during investigation. On seeing the same, it was stated by the witness that it was the same iron pipe which was used by the appellant while assaulting the deceased. It was also mentioned by the witness that the appellant had absconded after the incident and could be arrested only on 7th day of the incident. In her cross-examination it was mentioned by the witness that after she had gone to the house of Sarpanch, village leaders like Galajibhai, Dahyaji, Ramji Rupa etc. had collected at the place of incident and thereafter it was decided to inform police. According to this witness, time of about 2 to 3 hours was consumed before taking decision to inform the police. The suggestion made by the defence that the complaint was dictated by the Sarpanch was denied by her and it was asserted by her that the complaint as narrated by her was reduced into writing. The suggestion made by the defence that she was out to usurp land of the appellant and was, therefore, deposing falsely against the appellant, was also emphatically denied by her. It was admitted by her that she had not stated in the complaint that an attempt was made by her and others to save the deceased when she was being assaulted by the appellant and that the appellant had threatened them. The other suggestions made by the defence, such as, that the appellant had not killed the deceased or had not run away etc. were also denied by the witness. This is all what transpires from the testimony of Lilaben. On reappraisal of evidence of witness Lilaben, this Court finds that she has given deposition in a most natural manner. There are no exaggerations in her testimony. No major contradictions and/or omissions could be brought on record with reference to her complaint. On the contrary, her

testimony stands fully corroborated by her complaint. The claim made by this witness that the deceased had run for her life towards the house of Jivaji, who was also her brother-in-law and also towards the house of Gulabji stands completely corroborated by the evidence of other eye witnesses examined by the prosecution. In fact, the defence could not substantiate its claim that this witness was out to usurp the land of the appellant and was, therefore, falsely deposing against the appellant. It could not be brought on record by the defence that this witness was on inimical terms with the appellant nor it could be brought on record that this witness had special interest in the deceased, who was not related to her and who was belonging to another village. On reappreciation of her evidence, this Court finds that her reliable testimony establishes that the appellant had brutally assaulted the deceased by means of an iron pipe and caused her death. The plea that delay in lodging complaint is not explained by the complainant and, therefore, her testimony should be disbelieved is merely stated to be rejected. It is relevant to notice that the appellant had started assaulting the deceased in a brutal manner at about 2.00 P.M. The manner in which the deceased had made attempts to save herself and run from one house to another and the number of blows which were inflicted by the appellant would indicate that the incident must have lasted/continued at least for 10 to 15 minutes. In view of brutal and shocking assault mounted by the appellant on the deceased, witness Lilaben and others must have been stunned. Her evidence would show that after the incident was over, she herself had ascertained and found that the deceased had died. Thereafter she had gone to the house of Sarpanch and informed him about the incident. Going to the house of Sarpanch and conveying information to him would have taken its own time. Her testimony further shows that Sarpanch had called leaders of the village. Thus, sometime must have been spent in calling leaders of the village. Thereafter all had come to the place of incident and after discussion, which had lasted for about 2 to 3 hours, a decision was taken to inform the police. Under the circumstances, Lilaben, who was one of the eye witnesses, had volunteered to lodge complaint against the appellant and gone to Vijaynagar Police Station, which is at a distance of 12 KMs. away from her village. Of course, her evidence shows that she in the company of Sarpanch had gone in bus to Vijaynagar Police Station. However, there is no manner of doubt that some time must have been spent in catching the bus and going to Vijaynagar Police Station. Thus, the so-called delay in lodging complaint stands satisfactorily explained by the

evidence of the complainant herself and it is wrong to suggest that as delay caused in lodging the complaint is not explained, testimony of the complainant, who is one of the eye witnesses, should be disbelieved. The plea that she had not made any attempt to save the deceased and, therefore, she should be disbelieved, has no substance. The testimony of this witness shows that she had made an attempt to save the deceased, but could not intervene because the appellant had threatened her. This claim of the witness cannot be disbelieved merely because this fact is not mentioned in the complaint. It is well settled that all minute details need not be stated in the complaint. The testimony of witness Gulabji, who was First Grade Jamadar, would show that he had asked the appellant to desist from beating the deceased, but the appellant had rudely asserted his right to beat the deceased stating that she was his wife and refused to listen to First Grade Jamadar. This would indicate that the appellant was a head strong person. Under the circumstances, the assertion made by wintess Lilaben that she could not intervene to save the deceased, as the appellant had threatened her, inspires confidence of this Court. The plea that Lilaben could not give exact account of injuries sustained by the deceased and, therefore, was not an eye wintess to the incident is devoid of merits. Her evidence would show that on brutal attack being mounted by the appellant on the deceased, she was stunned and law does not expect a witness to give account of each injury sustained by the victim as if a video tape is being displayed. Thus, the case against the appellant stands amply and satisfactorily proved by reliable and cogent testimony of witness Lilaben.

10. Again, the evidence of witness Jiviben Mavajibhai, PW.4, examined at Exh.17, would indicate that she is grandmother of the appellant and mother-in-law of witness Lilaben. She has given particulars of her sons and stated that a week prior to the date of incident, mother of the appellant had gone out of the village. According to this witness, two months prior to the date of incident, the appellant had brought deceased Nayanaben as his wife and that quarrels were taking place between the appellant and the deceased. What is maintained by this witness is that the incident in question had taken place at about 2.00 P.M. and that the appellant had severely beaten the deceased by means of an iron pipe. This witness has also stated before the Court that in order to save herself, the deceased had made an attempt to run, but was overpowered by the appellant and had brought her back and again beaten her. It is further stated by the witness that because of assault mounted by

the appellant on the deceased, the deceased had died. In her cross-examination, it was informed by her to the Court that she was staying with her son Dalaji and that her police statement was recorded on the next day of the incident. According to her, police had asked her questions about the incident. It was also mentioned that Jivaji was her nephew and he was son of her brother-in-law. The suggestion made by the defence that there was dispute between Himatbhai, who was father of the appellant and Jivaji regarding land, was emphatically denied by the witness. According to this witness, Shanta, who was mother of the appellant and wife of his son, was staying at her parental home after death of father of the appellant, and that she had returned to village only after her children i.e. the appellant and another son had grown up. In her cross-examination also it was asserted by the witness that at the time of incident she was at her house. The suggestion made by the defence that she was falsely deposing before the Court that the appellant had assaulted the deceased, was specifically and emphatically denied by her. It was admitted by her that she had difficulty in seeing things from a distance and that she had also hearing trouble, but, it was emphatically denied by her that she was giving deposition at the instance of Jivaji and Dalaji. On reappreciation of evidence of this witness, this Court finds that she is grandmother of the appellant. Her testimony stands completely corroborated in material particulars by testimony of witness Lilaben. Her name as one of the eye witnesses to the incident is also mentioned in the complaint. No good reason could be suggested as to why she was deposing against the appellant. She was not interested in the deceased nor on inimical terms with the appellant. In fact, she was closely related to the appellant and had no reason to involve the appellant in such a serious case. No contradictions and/or omissions worth the name could be brought on record so far as this witness is concerned. Under the circumstances, this Court is of the firm opinion that the learned Judge of the trial Court, who had advantage of observing demeanour of witnesses, did not commit any error in placing reliance on the testimony of witness Jiviben for the purpose of coming to the conclusion that the appellant had killed the deceased. Her evidence in no uncertain terms establishes that the appellant had brutally killed the deceased. The evidence of witness Jiviben is of sterling quality and by itself is sufficient to sustain conviction of the appellant under Section 302 I.P.C.

11. So also, the evidence of witness Gulabji, PW.3,

examined at Exh.14, would show that at the relevant time he was employed as First Grade Jamadar and was residing at Ahmedabad. His native place is village Jaleti and as he had taken sick-leave, he had come to his village Jaleti. The testimony of this witness shows that on March 20, 1997, he was sitting near the house of his nephew where carpenters employed by him were working. According to this witness, the name of carpenter engaged by him was Mogjibhai. What is mentioned by the witness is that at about 2.15 P.M. he had found that a lady was coming towards him and was shouting to save herself and that the appellant was chasing her with an iron pipe in his hand. According to this witness, he had asked the appellant not to beat the deceased, but the appellant had arrogantly informed the witness that the deceased was his wife and was entitled to beat her. According to this witness, he had asked the appellant to take the lady to his house and not to beat her, but the appellant had dragged the deceased to his house and given 2 to 3 blows near his house. This witness was also shown muddamal iron pipe and on seeing the same had identified the same as the pipe with which the appellant had assaulted the deceased. In his cross-examination, it was stated by the witness that he was serving in police department since 30 years and that except production of accused in Court, he had no other experience. It was also stated by the witness that he was called by the police on the next day of incident, but he was not remembering whether his police statement was recorded on that day or not. The witness has further informed the Court that distance between his house and the house of the appellant was roughly about 150 ft. The witness had pleaded ignorance about the dispute relating to land between Himatbhai, who was father of the appellant and his brothers. He had also pleaded ignorance as to whether Sarpanch had made arrangement to sell land belonging to deceased Himatbhai to one of his relatives. According to this witness, within no time the appellant had dragged the deceased to his house and, therefore, it was not noticed by him as to whether the deceased had sustained injuries or not. It was put to the witness that he had not stated in his police statement that he had seen that the appellant had given 2 to 3 blows to the deceased by means of pipe. However, it was emphatically asserted by the witness that it was so stated by him in his police statement. It is worth noticing that no question was put to the investigating officer regarding so-called omission made by this witness in his police statement and, therefore, the so-called omission does not stand proved in the eye of law. It was also admitted by the witness in his cross-examination that two sons of Jivaji were serving in

police department. What was maintained by the witness was that he had no enmity with the family of the appellant and was on talking terms with the appellant. The suggestion made by the defence that he was deposing falsely at the instance of Jivaji was emphatically denied by him. Reappreciation of evidence of this witness also indicates that he is an independent witness and had witnessed the incident. This witness has narrated the facts as were witnessed by him, without any exaggeration. The evidence of this witness is completely corroborated by the testimony of witness Lilaben. His name as one of the eye witnesses to the incident also figures in the complaint. He is neither interested in the deceased nor on inimical terms with the appellant. In fact, arrogance and rudeness which was exhibited by the appellant when he was asked by this witness not to beat the deceased, is evident from the testimony of this witness. The evidence of this witness also establishes beyond pale of doubt that the appellant had brutally assaulted the deceased and killed her. The only disturbing feature which this Court notices and which is shocking is that though this witness was a police officer, he could not rescue the deceased.

12. Yet, another witness examined by the prosecution in order to bring home guilt to the appellant is Mogjibhai Kanaji, PW.5, examined at Exh.17. His evidence would indicate that he is carpenter by profession and had gone to do carpentry work at the house of witness Gulabji Valaji Makwana. According to this witness, when he was doing work, deceased Nayanaben had come running and was being chased by the appellant, who was having iron pipe in his hand. After identifying the iron pipe before Court, which was used by the appellant in commission of crime, it was asserted by the witness that the appellant had dragged the deceased from a place which was near the house of Gulabji and had given blows with pipe on the back of the deceased. According to this witness, he had also asked the appellant to go away and maintain piece, but the appellant had rudely asked him not to say anything to him because the deceased was not his wife. According to this witness, after the deceased was dragged by the appellant into his house, the deceased was shouting loudly and that subsequently he had learnt that the deceased had died. It was also mentioned by the witness that several persons had gathered near the house of the appellant and that he was informed by the members of the crowd that the name of the appellant was Bipin, whereas the name of the deceased was Nayanaben. In his cross-examination, the witness has stated that his police statement was recorded on the next day of the incident at

Vijaynagar Police Station. According to him, he was working in village Jaleti before 8 to 10 days of the incident. The suggestion made by the defence that he had worked at the house of Jivaji was denied by him. It was suggested to the witness that he had not stated in his police statement that the appellant had given two pipe blows to the deceased, but, the said suggestion was emphatically denied by him. This contradiction also does not stand proved, as no question was put by the defence to the investigating officer. The suggestion made by the defence to the witness that he was deposing falsely against the appellant because he had good relation with Sarpanch of the village was also denied by him. The suggestion that he was falsely deposing that the appellant had dragged the deceased and beaten her was also emphatically denied by the witness. On reappraisal of evidence of this witness, it is evident that the witness belongs to village Chitaria, which is altogether a different village, and that at the time of incident, he was doing work at the house of witness Gulabji. The evidence of the witness stands completely corroborated by the testimony of witness Gulabji. Though the witness was searchingly cross-examined, nothing could be brought on record which would suggest that he was either interested in the deceased or was on inimical terms with the appellant. In fact, name of this witness also figures in the testimony of witness Lilaben and the complaint. No exaggerations are found in his evidence. No contradictions and/or material omissions could be brought on record with reference to earlier police statement of this witness. Under the circumstances, this Court is of the opinion that case against the appellant stands amply proved by the disinterested and totally independent testimony of witness Mogjibhai Kanaji. The plea that he was under the thumb of Sarpanch and was deposing falsely against the appellant has no substance. It is well to remember that the suggestions made and denied do not constitute evidence in the eye of law. Nothing could be brought on record to establish that witness Mogjibhai was under influence or obligation of the Sarpanch and was deposing against the appellant at the instance of the Sarpanch. In fact, it could not be established that the Sarpanch himself had any enmity with the appellant and, therefore, the suggestion that witness Mogjibhai was deposing against the appellant at the instance of Sarpanch has no evidentiary value worth the name.

Thus, testimonies of all the four eye witnesses are found to be trustworthy and reliable.

13. There is yet another incriminating circumstance

appearing against the appellant from the evidence adduced by the prosecution. The testimony of witness Kanaji Koyaji, PW.8, examined at Exh.25, read with the testimony of investigating officer, would show that while in custody the appellant had shown willingness to show the place where he had concealed the iron pipe used in commission of the offence. The testimony of witness Kanaji Koyaji unerringly establishes that the appellant had taken the panch witnesses accompanied by the investigating officer to a place where Dhatura trees were grown behind well situated near the house of the appellant and had taken out the iron pipe. The place which is mentioned by witness Kanaji Koyaji and also mentioned in the panchnama, is not a place accessible to one and all. The discovery of iron pipe used in commission of crime has inspired confidence of the trial Court and also inspires confidence of this Court. Thus, testimony of witness Kanaji Koyaji read with the discovery panchnama of iron pipe establishes that the appellant had concealed iron pipe after commission of crime. The pipe was found to have human blood stains. Though the group of blood found on the iron pipe could not be ascertained, the fact that it had human blood is of importance. The appellant could not offer any explanation as to how human blood was found on the iron pipe which was discovered pursuant to the information given by him while in custody. This is also a circumstance against the appellant and lends corroboration to the testimonies of eye witnesses. At this stage it would be relevant to notice the defence pleaded by the appellant in his further statement. His case in the further statement recorded under Section 313 Cr.P.C. was that he was falsely implicated in the case. The evidence on record clinchingly establishes that after the incident the appellant had run away and was apprehended on seventh day of the incident. In his further statement he could not state as to who was murderer of deceased Nayanaben whom he had brought in his house as his wife. He could not explain as to why he himself had not lodged complaint regarding murder of deceased Nayanaben if he had not committed murder and someone else had killed her. He also could not explain as to why he was absconding for six days and where was he during relevant six days. These relevant circumstances coupled with reliable evidence of four eye witnesses make it clear that defence which was false to his knowledge was pleaded by the appellant. No attempt worth the name was made to probablise moonshine defence and therefore, cannot be accepted by this Court.

14. The net result of the above discussion is that

the prosecution has satisfactorily and beyond pale of any doubt established that on March 20, 1997 at about 2.00 P.M. the appellant had assaulted deceased Nayanaben by means of an iron pipe because he was suspecting her character and had committed her brutal murder in a cruel manner. The testimony of Dr.Narendrakumar Pande, PW.1, examined at Exh.7, would show that the deceased had sustained in all 10 injuries including three fractures. The testimony of the doctor shows that external Injury No.1, which was on head, was corresponding to internal Injury No.1 and was sufficient in the ordinary course of nature to cause death of the deceased. The cause of death as asserted by the Medical Officer was shock due to head injury. The appellant had not spared the deceased though the deceased had made attempts to save herself from being assaulted. The testimonies of the witnesses would show that on two occasions the deceased had attempted to run away, but the appellant had dragged the deceased to his house and ultimately killed her. The shrieks raised by the deceased out of agony and pain caused from infliction of pipe blows and fear of causing further unbearable injuries as well as shouts raised to save her life, were silenced only when life in her had become extinct. The only sin committed by the deceased was that while leaving her parental house, she had put implicit faith in the appellant that he would marry her and make her life happy. Instead of making her life happy, the appellant had let loose terror on her and killed her brutally. All the ingredients of offence as mentioned in Section 300 I.P.C. are satisfied. Therefore, the conviction of the appellant under Section 302 I.P.C. cannot be regarded as illegal. On the contrary, the Court finds that conviction of the appellant under Section 302 I.P.C. is eminently just and must be upheld by this Court in instant appeal. The appeal is, therefore, liable to be dismissed.

For the foregoing reasons, the appeal fails and is dismissed. Muddamal to be disposed of in terms of directions given by the learned Judge in the impugned Judgment.

(J.M.Panchal,J.)

(D.P.Buch,J.)

(patel)